The voice of banking
& financial services

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TREASURY DEPARTMENT
FOREIGN ASSETS CONTR...

Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue MW
Washington
DC 20220

2 November 2008

By email to Federal eRulemaking Portal: http://www.regulations.gov

Dear Sir

OFAC Economic Sanctions Enforcement Guidelines, Doc E8-20704

The BBA is the leading association for the UK banking and financial services sector, speaking for 223 banking members from 60 countries on the full range of UK or international banking issues and engaging with 37 associated professional firms. Many of our members have operations in the US.

The BBA welcomes the opportunity to comment on this Interim final paper relating to the guidance for OFAC procedures for reacting to alleged and possible breaches of economic sanctions. We note that while the Guidance has already taken effect (from 8 September 2008) that you may take into account any comments submitted by 7 November 2008.

We would like to say that we find the approach taken by OFAC in publishing these guidelines to be helpful in providing this information to industry. Our members are, of course, keenly determined to comply with the sanctions regimes in all of the jurisdictions in which they operate, but for those (hopefully exceptional) instances where a mistake may have been made, it is useful to be aware of the likely approach that OFAC will take.

We have comments in three main areas; first on voluntary self-disclosure, secondly on the risk based approach, and thirdly on OFAC's consultation of non-US institutions' home regulators.

1. **voluntary self-disclosure**: we hope that OFAC may be able to provide further guidance in this area as there are several aspects of this that appear to us to be unclear. A particular issue is for non-US banks where they are in a banking chain with US banks. The provisions on this where "Notification to OFAC of an apparent violation is not a voluntary self-disclosure if: a third party is required to notify OFAC of the apparent violation or a substantially similar violation because a transaction was blocked or rejected by that third party........" represent an invidious distinction between different parties in a banking chain. Furthermore, there is a provision that it

will not be a voluntary self-disclosure if the disclosure (+ supplementary information) is materially incomplete. In some circumstances (for example where banks are unable immediately to obtain access to supplementary information) this provision could be very unfair.

2. **the risk based approach**: the guidelines appear to mark a move away from OFAC's previously established policy that institutions should follow "a risk based" compliance approach. We are of this view because of OFAC's stated intention to apply penalties on every erroneous transaction. This is in direct contradiction of the previous policy that if institutions have a general policy to prevent or minimise errors occurring, they will not be penalised for each and every single transaction in error. This is also particularly relevant on cover payments where a situation may arise when a general error is made which causes a large number of transactions to be erroneous.

3. **OFAC's consultation of non-US regulators**: we understand that as part of OFAC's overall consideration of an institution's compliance culture and processes, it may choose to consult a non-US institution's home regulator. It may also choose to apply penalties to an institution which has not been able to provide information which OFAC is seeking. We urge OFAC both to be sensitive to the views of non-US regulators, and to take account of the possible difficulties of an institution's home country legislation which may preclude certain information being provided.

We hope that our views may be taken into account, and would be pleased to provide clarification or any further details that may be required.

Yours faithfully,

Sally J Scutt

Sally J Scutt
Deputy Chief Executive

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